

### REMARKS

The Office Action mailed May 31, 2005, has been received and its contents carefully considered. In view of the foregoing amendments and the following remarks, reconsideration of the outstanding rejections and allowance of the application is earnestly solicited.

### INFORMATION DISCLOSURE STATEMENT

An Information Disclosure Statement, (IDS) has been submitted for consideration and is attached hereto along with a fee of \$180.00 as set forth by CFR 1.17(p). The IDS identifies references EP 0390765 and JP 2002348448, both of which were previously submitted for consideration. The IDS also includes the European Search Report that cited each reference and explains the relevance of each. No further elaboration is believe necessary and Applicant respectfully requests consideration of the above-identified references.

### STATUS OF THE CLAIMS

Claims 1-11 are pending in this application. Claims 1 and 5 have been cancelled without prejudice or disclaimer. Applicant reserves the right to pursue the subject matter of these claims in this or another application. Claims 2, 6, and 8-10 have been amended to depend from new claim 11. Claim 11 has been submitted for consideration. Support for new claim 11 can be found in the specification as filed.

No new matter has been added by these amendments and no estoppels are intended thereby. Reconsideration and withdrawal of the outstanding rejections is respectfully requested in view of the following remarks.

### OFFICE ACTION REJECTIONS UNDER 35 U.S.C. § 102(b)

Claims 1-4, 6-8, and 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Johnston, et al.* (U.S. Patent No. 6,746,567). Claim 1 has been cancelled without prejudice,

disclaimer, or recognition of the propriety of this rejection. Claims 2-4, 6-8, and 10 have been amended to depend from claim 11 without the addition of any new material.

Applicant notes that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (quoting *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

Claim 11 has been added to recite, in part, that the sidewalls are comprised generally of a plastic containing a biocide additive, and a series of pipes extending from the sidewalls that are generally comprised of a plastic containing a biocide additive. Claim 11 also recites nozzles connected to the pipes that are generally constructed from a plastic containing a biocide additive. Finally, claim 11 recites a moist/wet region containing cooling inserts, where the cooling inserts are generally formed from a plastic containing a suitable amount of a biocide additive.

*Johnston, et al.* fails to disclose at least these features of claim 11. To the contrary, *Johnston* discloses a “microstructure-bearing surface with a plurality of channels thereon,” only, and not side walls and piping with nozzles connected thereto, nor does *Johnston* recite a moist/wet region containing cooling inserts. Furthermore, *Johnston* fails to disclose sidewalls, nozzles, and cooling inserts comprised generally of a plastic containing biocide.

Accordingly, Applicant respectfully submits that each and every element as set forth in claim 11 is not found, either expressly or inherently, in *Johnston, et al.* and therefore claim 11 is allowable over the prior art.

Claims 2-4, 6-8, and 10 depend from claim 11. Accordingly, applicant respectfully submits that claims 2-4, 6-8, and 10 are allowable for at least the same reasons discussed above in connection with independent claim 11.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Claim 9 stands rejected under 35 U.S.C. §103(a) as obvious over *Johnston, et al.* Claim 5 stands rejected under 35 U.S.C. §103(a) as obvious over *Johnston, et al.* and further in view of *Kostyniak, et al.* (U.S. Patent No. 6,288,076).

To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all of the claim elements. M.P.E.P. § 2143. There must also be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references. *Id.* Applicant respectfully submits that these criteria for obviousness have not been satisfied. Without conceding the propriety of the prior art rejection, claim 5 has been cancelled rendering this rejection moot with respect to this claim. Applicant respectfully traverses this rejection of claim 9.

Claim 9 depends from claim 11 and therefore recites in part that the sidewalls are comprised generally of a plastic containing a biocide additive, and a series of pipes extending from the sidewalls that are generally comprised of a plastic containing a biocide additive. Claim 9 by dependence also recites nozzles connected to the pipes that are generally constructed from a plastic containing a biocide additive. Finally, claim 9 recites a moist/wet region containing cooling inserts, where the cooling inserts are generally formed from a plastic containing a suitable amount of a biocide additive. As previously discussed in connection with the 35 U.S.C. § 102(b) rejection to claims 2-4, 6-8, and 10, *Johnston, et al.* fails to disclose side walls and piping with nozzles connected thereto, nor does *Johnston* recite a moist/wet region containing cooling inserts. To the contrary, *Johnston* discloses a film with a microstructure bearing surface containing a plurality of channels only. Furthermore, *Johnston* fails to disclose sidewalls, nozzles, and cooling inserts comprised generally of a plastic containing biocide. Thus, *Johnston* fails to teach or suggest all of the elements of claim 9 and therefore Applicant respectfully submits that a *prima facie* case of obviousness has not been established.

For at least the reasons set forth above, Applicant respectfully requests withdrawal of this rejection to claims 5 and 9.

CONCLUSION

In accordance with 37 C.F.R. § 1.14, Applicant respectfully requests that upon the allowance of generic claims 11, dependent claims 2-4 and 6-10 be considered. Dependent claims 2-4 and 6-10 depend from claim 11, which is believed to be generic, and include all the features contained therein.

No extension-of-time fee is believed due. However, any extension of time necessary to prevent abandonment is hereby requested, and any fee necessary for consideration of this response is hereby authorized to be charged to Deposit Account No. 50-2036.

In view of the foregoing, reconsideration and allowance of the application are believed in order, and such action is earnestly solicited.

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned attorney at (202) 861-1714.

Respectfully submitted,

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